

General Information Letter: Nexus determinations generally cannot be made in the ruling process.

April 13, 2001

Dear:

This will serve as a reply to your correspondence dated March 26, 2001 in which you request a Private Letter Ruling under 2 Ill. Adm. Code Sec. 1200. Therein you state as follows:

Under power of attorney, Form II-2848 enclosed, I hereby request a Private Letter Ruling pursuant to Title 2: Subtitle D: Section 1200.110. The issue herein presented for your ruling is whether a Michigan based manufacturing corporation has Nexus to Illinois for sales of its tangible personal property, i.e., manufactured machine parts, to its Illinois customer. Our position is that we are protected under Public Law 86-272 and therefore should not be subjected to Illinois income tax.

The following will outline our facts:

1. -xxxxxxxxxxxxxxxxxxxxxxxxxxxx, an S Corporation, xx-xxxxxx, xxxxx xxxxxxxxxxxxxx, xxxxx, MI xxxxx. All of its employees, owners, officers are Michigan residents. The company has no offices, personnel, or sales representatives in Illinois. Its only Illinois customer is xxxxxxxxxxxxxxxxx.

-Contact for job quoting is made by xxxxxxxxxxxxxxxxx personnel to our Michigan based facility. xxx performs no soliciting in Illinois. All jobs are on a per production part quote. Production of parts are on a one to two year quoted basis.

-xxxxxxxxxxxxxxxxxxxxxx personnel visit our Michigan facilities and maintain a routine inspection and quality control adherence prior to shipment of an initial job order.

-Shipment of xxx parts is done at our Michigan plant via common carrier to xxx in Illinois. All other contact is performed through telecommunications technology.

-Once our parts arrive in Illinois, xxx inserts these parts in its production assembling process. On occasion our engineering quality control personnel, usually two persons, will be required to respond to xxx production problems attributable to our parts. Our personnel will be at the Illinois xxx facility for no more than two consecutive days, very often partial days, and on a twelve-month basis between 15 and 23 days.

-Our records support the following days in Illinois:

<u>YEAR</u>	<u># DAYS</u>
1996	18
1997	13
1998	22
1999	15
2000	23

2. All contacts with xxxxxxxxxxxx are on a job quote basis and will be provided on request.
3. The tax period at issue is 1996, 1997, 1998, 1999, 2000. We are not under any audit or litigation pending with the Department.
4. Neither the company nor their representatives have requested a similar ruling, nor have any knowledge of any similar issue.
5. We believe Public Law 86-272 provides us protection in as much as our parts represent tangible personal property. We conduct no solicitations in Illinois. Our personnel visit the xxx Illinois facility only as production problems arise. These visits are not routine in nature, and are provided only at the specific request of xxx.
6. The only contrary authority to the best of my knowledge is a New York case, Orvis vs. Tax Appeals Tribunal, 86 N.Y.2d 165, 654 N.E.2d 954 (1995). The court found that four visits to 19 customers in one year was enough to allow the state to tax a Vermont wholesaler. I am unaware of any Illinois cases pertaining to Nexus decisions. Therefore, if Nexus is established for xxxxxxxxxxxx, business income will be apportioned to Illinois under Section 304 of the IITA.
7. There is no specific trade secret information that needs to be deleted.

We initially note that you have previously written to this office on this same topic on June 27, 2000, and that you received a reply from Associate Counsel Heidi Scott thereto on March 5, 2001 (IT 01-0022-GIL). Notwithstanding your formal, current request, it is not within the scope of a private letter ruling to determine whether a taxpayer has nexus with the State of Illinois. Such a determination can only be made in the context of an audit wherein the auditor would have full access to all pertinent information. Rather, a general information letter, such as was issued to you previously by Ms. Scott, must suffice.

That letter fully explained to you the principles of law applicable to nexus with the State of Illinois, apportionment of business income, and imposition of income tax, and need not be repeated here. By means of additional information, we can state that Illinois construes the protection afforded by P.L. 86-272 quite narrowly. Almost any activity in

excess of the parameters of that statute will cause that protection to be forfeited. Furthermore, Illinois has long taken the position that if an entity has business income apportionable to this State under Section 304 of the Illinois Income Tax Act, that the requisite nexus exists to tax that income. On the surface, it appears to this office that the breakdown showing the number of days spent by your client's employees in Illinois as an incident to sales into this State might support nexus to assert income taxation.

This is merely a general information letter and not a statement of policy. Therefore, it is not binding on the Department. I hope it has been helpful to you. If you have further questions, you may access the Department's web site at <http://www.revenue.state.il.us>. or you may contact this office.

Sincerely yours,

Jackson E. Donley,  
Senior Counsel-Income Tax